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Supreme Court, U.S.
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No. 08-740

SUPREME COURT OF THE UNITED STATES

OTTO CURRAS ORTIZ;

Petitioner,

V.

PUERTO RICO SUPREME COURT

Respondent

Petition for Writ of Certiorari to the
Supreme Court of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the due process guarantees of the Fifth and Fourteenth Amendment to the U.S. Constitution are violated when an unlawfully constituted state supreme court, operating without proper composition or quorum, adjudicates motions and enters final orders removing attorney from his profession.

LIST OF PARTIES

Petitioner is Mr. Otto Curras, a private citizen and domiciliary of San Juan, Puerto Rico. Respondent in this matter is the Puerto Rico Supreme Court, the highest court of the Commonwealth of Puerto Rico.

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PETITION FOR A WRIT OF CERTIORARI

To the Honorable John G. Roberts Jr., Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Mr. Otto Curras Ortiz ("petitioner") respectfully petitions this Court for a writ of certiorari to review the adjudications and final orders of the Puerto Rico Supreme Court in this case after July 31, 2008 when it no longer counted with the minimum number of sitting Justices required under the Puerto Rico Constitution for said court to remain properly constituted.

OPINIONS BELOW

The Puerto Rico Supreme Court entered Judgment and *Per Curiam* Opinion in this matter on July 31, 2008 under case number CP-2003-1 (Appendix A). Motion for reconsideration (Appendix B) and a separate motion soliciting provisional remedies (Appendix C) were timely filed on September 5, 2008. The motions were denied by Order entered on September 11, 2008 (Appendix D). Subsequently, a second motion for reconsideration was timely filed on September 17, 2008 (Appendix E) and denied by order of September 22, 2008 (Appendix F) which is the last and final order entered in the matter.

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this Honorable Court pursuant to 28 U.S.C. §1257

because the final judgment of the highest court of Puerto Rico has been rendered. The petition is being filed within 90 days of the last order entered by the Puerto Rico Supreme Court in the matter, dated September 22, 2008.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. CONSTITUTION

Amendment V to the Constitution of the United States of America states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV to the Constitution of the United States reads in relevant part: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

PUERTO RICO CONSTITUTION

Article 1 § 1 of the Constitution of Puerto Rico states: "The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America."

Article 1 § 2 of the Constitution of Puerto Rico states: "The government of the Commonwealth of Puerto Rico shall be republican in form and its legislative, judicial and executive branches as established by this Constitution shall be equally subordinate to the sovereignty of the people of Puerto Rico."

Article 5 § 1 of the Constitution of Puerto Rico states: "The judicial power of Puerto Rico shall be vested in a Supreme Court, and in such other courts as may be established by law."

Article 5 § 2 of the Constitution of Puerto Rico states: "The courts of Puerto Rico shall constitute a unified judicial system for purposes of jurisdiction, operation and administration. The Legislative Assembly may create and abolish courts, except for the Supreme Court, in a manner not inconsistent with this Constitution, and shall determine the venue and organization of the courts."

Article 5 § 3 of the Constitution of Puerto Rico states: "The Supreme Court shall be the court of last resort in Puerto Rico and shall be composed of a Chief Justice and four Associate Justices. The number of Justices may be changed only by law upon request of the Supreme Court."

STATUTES

PR Public Law 600 of the 3rd of July of 1950, Chapter 446, 64 Stat. 314. Said statute states in relevant part: "It is decreed by the Senate and House of Representatives of the United States, assembled in Congress, that, in ample recognition of the principle of government by consent of those governed, this law is adopted, as a compact, so that the people of Puerto Rico can establish a government in a manner consistent with the constitution that they adopt."

STATEMENT OF THE CASE

The proceedings that give origin to the question presented for review in this matter revolve around alleged ethical violations occurring during civil actions involving the division of three separate hereditary estates. In 1987, and upon the death of his uncle Miguel Ortiz Marrero, petitioner Otto Curras filed an action seeking a "Declaration of Heirs"[1] where he was declared sole heir to his late uncle's estate consisting of $48,366.59 in deposited bank funds. Nearly five years later, in the year 1992,

[1] A "Declaration of Heirs" is a civil mechanism by which the Puerto Rico courts name and declare who are the lawful heirs to a hereditary estate in order for its division to be completed in accordance to law.

the wife and two daughters of the decedent, who resided in North Carolina and New Jersey respectively, filed ethics complaints against petitioner Otto Curras alleging, *Inter Alia*, that they were the legitimate heirs to the estate of Miguel Ortiz Marrero; that they did not know Mr. Otto Curras personally but that they knew of him; that they believed Mr. Otto Curras knew that his uncle had married in the United States and had two daughters; that Mr. Curras had additional family members within Puerto Rico; and that the Declaration of Heirs obtained by him declaring him the sole heir of Mr. Miguel Ortiz Marrero's estate was obtained through fraudulent means.

In his defense, Mr. Otto Curras raised that he did not know that his uncle had any legitimate heirs in the United
States, and that while additional heirs of his uncle existed within Puerto Rico, none of them had interest in the inheritance and that they all had consented to him being declared sole heir. Curras submitted the sworn statement of Mrs. Myrta Rivera Ortiz, one of such heirs, to the effect that she like the rest of the heirs had no interest in the inheritance of her uncle, and that she too had no idea that her uncle had family in the United States. The situation above resulted in Mr. Curras receiving the sanction of disbarment for a year, and removal as a notary for two years, after disciplinary proceedings.[2]

During that time, in 1991, one Nemesia Curras Figueroa, aunt to petitioner Otto Curras also passed away. Mrs. Curras Figueroa, who never had any children, had become widowed nine months

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[2] In Re: Otto H. Curras Ortiz, 141 DPR 127 (1996).

earlier when her late husband Jose R. Aponte Palma died. Later, in 1993, the heirs of Mr. Aponte Palma initiated suit against the heirs of Mrs. Curras Figueroa seeking the division and distribution of the assets and property accumulated by the late couple during their marriage.[3] Aponte Palma's heirs claimed that the only marital asset subject to division was certain real estate property in the municipality of Caguas, Puerto Rico were the decedents had resided. The Curras heirs, represented by petitioner, insisted that the marital assets subject to division included in excess of $1.8 million dollars deposited in various bank accounts.

The heirs of Mr. Aponte Palma contended that said monies were his personal property, not subject to division, but only after initially attempting to hide the existence of the accounts. After very contentious litigation, the Puerto Rico Superior Court, Caguas Division, entered judgment holding that the contested 1.8 million dollars constituted marital property subject to division between the estates of Mr. Jose R. Aponte Palma and Mrs. Nemesia Curras Figueroa. Petitioner Otto Curras then sought a "Declaration of Heirs" declaring him and various uncles and cousins heirs to the estate of Nemesia Curras Figueroa.[4]

At the same time, the Aponte Palma heirs initiated a parallel suit in the Puerto Rico Superior Court, Caguas Divison, under the civil case number

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[3] The case was filed in the Puerto Rico Superior Court, Caguas Division, under the caption and number Estate of Aponte Palma v. Estate of Nemesia Curras, EAC-93-0061 (612).

[4] The case civil action was filed in the Puerto Rico Court of First Instance, Caguas, on January 19, 1993 and under civil case number CD-93-126.

EAC 92-0327, seeking the judicial appointment of an executor to the decedents' estate. During the above proceedings, which later became consolidated, the Aponte Palma heirs raised the issue that one of the Curras heirs was a mentally disabled person[5], and that it appeared that the court was not made aware of that fact. The court referred the matter to the Puerto Rico Supreme Court for an ethics investigation of all the attorneys involved in the case. The Supreme Court then referred the matter to the office of the solicitor general, for a complete investigation and pursuit of potential disciplinary measures.

Mr. Otto Curras Ortiz was ultimately charged with four ethical violations, based upon the findings by the solicitor general alleging that he had misled the court and additionally that he had failed to be completely honest and truthful when raising his defenses to the previous disciplinary action taken against him.[6] The basis for those findings was the allegation that Curras had failed to include his mentally ill adopted sister, Madreselva Curras Ortiz, in the Declarations of Heirs for the estates of Mr. Miguel Ortiz Marrero and Mrs. Nemesia Curras Figueroa. The investigation by the solicitor general also noted that Mr. Otto Curras, upon the death of his parents, had sought a Declaration of Heirs naming him the sole Heir to their parents estate,

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[5] Madreselva Curras, the adopted sister of petitioner Otto Curras, who resided in the care of a menta! institution due to a diagnosis of profouns retardation.

[6] Curras was charged with violating Puerto Rico Canons of Legal Ethical Conduct 9, 12, 35 and 38, 4. P.R.L.A Ap. IX.

once again leaving Madreselva Curras unnamed as heir.[7]

The defense of petitioner Curras to the charges of unethical conduct centered around his arguments that he had already been sanctioned with a one year disbarment for the conduct charged and the fact that he did not know that his parents had legally adopted Madreselva Curras until the year 1994 after the subject Declarations of Heirs had been filed. Further, that upon corroborating the information he sought an amendment of said Declarations of Heirs to include Madreselva. In its findings, later adopted by the Puerto Rico Supreme Court, the solicitor general decided this credibility issue against petitioner and imputed that Curras had attempted to unlawfully disinherit his sister and deprive her of her rights as lawful heir to the discussed estates. Mr. Otto Curras vehemently opposed those allegations, and pointed out that none of his errors had resulted in any injury or prejudice to any lawful heirs, including Madreselva Curras, for whom he acted as legal tutor and had assumed all responsibility for her expenses, sustenance, and life decisions, after the death of their parents. In fact, upon the death of Madreselva Curras, petitioner Otto Curras was her sole lawful heir and inherited the totality of her estate.

Nevertheless, on July 31, 2008, the Supreme Court of Puerto Rico issued its judgment in the matter adopting the findings of the solicitor general's office and holding that petitioner Curras had violated 3 of the 4 canons of ethics cited. The opinion came

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[7] In Re Estate of Margarita Ortiz Marrero and Rafael Curras Figueroa, Civ. Number KJV-89-322 (808), Puerto Rico Superior Court, San Juan (April 3, 1989).

during the last work day of the Hon. Francisco Rebollo Lopez as Justice in said court. Thereafter, the Court, with less than the 5 Justices required for a lawful composition, ruled upon petitioners motions seeking reconsideration and seeking provisional remedies. It is under this record that Mr. Otto Curras now petitions for certiorari.

REASONS FOR GRANTING THE PETITION

Petitioner very respectfully argues to this Honorable Court that he was removed indefinitely from the practice of his profession as an attorney without due process of law in violation of his rights under the fifth and fourteenth amendments to the U.S. Constitution. The basis of his claim arises from the adjudication, by an unlawfully constituted Puerto Rico Supreme Court, of two separate motions for reconsideration of its judgment dated July 31, 2008 removing him indefinitely from the practice of law, and the denial of a separate motion requesting provisional measures until the court was properly constituted pursuant to the Constitution of Puerto Rico. The review sought involves only the adjudications by said court after July 31, 2008 while it was not properly constituted and/or lacked quorum.

The matter presented for review is one that truly involves an urgent civil rights issue with the potential to impact the nearly 4 million U.S. citizens that reside in Puerto Rico. Since August 1, 2008, the Supreme Court of Puerto Rico continues to decide cases without quorum or constitutional authority. Such action denies due process not only to the parties involved in the cases decided, but also to the rest of

the populace that has to live under any precedents set by those decisions. The wide array of litigation involved is also cause for concern, as the court unlawfully disposes of cases affecting fundamental rights of citizens in contexts such as liberty and property without affording the required due process. Because the actions of the Puerto Rico Supreme Court also diminish the trust that the people of the commonwealth have in their institutions of government, at a time when wide allegations of corruption have become commonplace, the intervention of this Court is of the essence to restore confidence in government.

ARGUMENT

The Constitution of the Commonwealth of Puerto Rico mandates that the territory shall have a republican form of government, with its 3 branches of government, the legislative, executive, and judiciary equally subordinate to the sovereignty of the people of Puerto Rico. PR Const. Art. 1, Sec 2. In creating the Commonwealth's judicial branch, whose power is to remain in one Supreme Court as the highest court, said constitution establishes that the Supreme Court of Puerto Rico shall be composed of one presiding justice, and four associate justices. PR Const. Art 5, Sec 3. Moreover, the same constitutional provision expressly mandates that the number of justices in the Supreme Court can only be changed by law [statute], and only upon request by the same court. Id. Over the years, the legislature of Puerto Rico has acted to increase the number of justices allowed to sit on the Supreme Court to seven in order to promote its proper functioning. However, it is questionable

whether even the legislature has the authority, absent a constitutional amendment, to decrease the number of justices sitting on Puerto Rico's highest court to a number lower than five. Id.

It is under this framework that the constitutional harms for which petitioner now seeks redress from this court ensue. In its Judgment and *Per Curiam* Opinion dated July 31, 2008, the Supreme Court of Puerto Rico adopted and affirmed the recommendations of the commonwealth's solicitor general to the effect that petitioner Otto Curras had violated three canons of professional responsibility and ordered him indefinitely removed from the legal profession. See, Judgment and *Per Curiam* Opinion dated July 31, 2008, Appendix A. On the same day of said Judgment, the Hon. Francisco Rebollo Lopez retired from the Puerto Rico Supreme Court reducing the number of its sitting justices to four. Subsequently, two separate motions for reconsideration where filed by Mr. Curras in addition to a third motion requesting temporary relief and/or provisional measures until the court was once again properly empanelled pursuant to the Constitution of the Commonwealth of Puerto Rico. See, Motion for Reconsideration (Appendix B); Motion Requesting Provisional Remedies (Appendix C); and Second Motion for Reconsideration (Appendix E). All three

motions were ruled upon by a Puerto Rico Supreme Court composed of only four justices, one of which removed herself from the case due to having a potential conflict of interest.[8] See, Order entered on

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[8] Justice Anabellè Rodriguez Rodriguez was serving as Puerto Rico's attorney general, office under which the solicitor general is a subordinate, at the time the ethics investigation of Mr. otto Curras commenced.

September 11, 2008 (Appendix D) and Order of September 22, 2008 (Appendix F).

As this Honorable Court has held and reaffirmed, individuals have a property interest -- protected by the Fourteenth Amendment to the U.S. Constitution -- in the practice of their chosen professions.[9] Meyer v. Nebraska, 262 U.S. 390. A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process Clause of the Fourteenth Amendment. Dent v. West Virginia, 129 U.S. 114; Slochower v. Board of Education, 350 U.S. 551; Wieman v. Updegraff, 344 U.S. 183. This court has set forth three factors that normally determine whether an individual has received the "process" that the United States Constitution finds due:

> "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893 (1976).

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[9] The Due Process protections of the Fifth Amendment, enforcible against the states under the Fourteenth Amendment, also protect petitioner Curras.

"By weighing these concerns, courts can determine whether a state has met the fundamental requirement of due process - the opportunity to be heard at a meaningful time and in a meaningful manner." Id., at 333.

The first of the listed factors clearly favors petitioner Curras. His affected property interest is his ability to continue practicing the legal profession; his sole source of economic sustenance.[10] In considering the second factor, it is evident that a properly constituted Puerto Rico Supreme Court, with no less than five justices, but up to seven, would have afforded petitioner a fairer opportunity to persuade said court that his removal from the practice of law was not warranted. Not only was that process mandated by the Constitution of Puerto Rico denied to him, but given that reasonable minds can disagree, and that the ultimate decision to disbar him turned strictly on credibility determinations, it is quite possible that if the proper procedure was followed he would have received either a lesser sanction or none at all. Had the panel disbarring him been created from the required pool of Justices, it is likely that differing views would have entered into the consideration of his case.

The third factor is the most complex to consider, but we submit that it also favors petitioner Curras. Puerto Rico's political cycle over the last four years, with the legislature dominated by the new progressive party and the governorship held by a member of the popular democratic party, has led to

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[10] At age 67, and suffering chronic illnesses such as diabetes, it is impractical for him to be retrained and commence a career in a different field.

substantial gridlock in the commonwealth's governance. No place has such gridlock become more notorious than in the filling of the vacancies that have surfaced in the Puerto Rico Supreme Court.[11] Needless to say, the governor and the legislature have not been able to agree on a single candidate to fill said vacancies, and political discourse seems resigned to waiting until after the 2008 elections, when a new government is sworn in, to do so. That scenario has caused a constitutional crisis in Puerto Rico that simply has been ignored by all branches of government.[12] Rather than recessing until it is once again properly constituted, the Supreme Court of Puerto Rico has continued to conduct its business and decide cases with less than the number of justices required by the Puerto Rico Constitution to constitute said court. PR Const. Art 5, Sec 3.

While that course of action is certainly convenient, and the government does have an interest in having all its branches operating, it is no less true that protecting the commonwealth's constitution is its most solemn obligation. To balance this third factor against petitioner would require no less than a finding that the government of Puerto Rico, including its Supreme Court, has an

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[11] The first vacancy opened on April 7, 2005 upon the retirement by age of Justice Baltasar Corrada del Rio; the second came about on December 3, 2007 due to the untimely death of Justice Jaime Fuster; and the last on July 31, 2008 upon the retirement also by age of Justice Francisco Rebollo Lopez.

[12] On November 4, 2008 The New Progressive Party won control of the legislative and executive branches of government, but it is unknown how quickly they will move to fill the vacancies in the Puerto Rico Supreme Court upon the inauguration of the new government on the first week of January, 2009.

interest which supersedes that of upholding its own constitution. It is very respectfully argued that the Government of Puerto Rico can never have a legitimate interest in violating its own constitution; the document from which all its powers emanate. Furthermore, in continuing in session under the discussed circumstances, the Supreme Court of Puerto Rico is usurping powers which were never granted to it by the constitution, Congress, nor the people.

Accordingly, the actions of the Supreme Court of Puerto Rico fail to pass the scrutiny of the Mathews v. Eldridge test and must be overruled on due process grounds. Mathews v. Eldridge, at 319, 335.

While there is no direct precedent we can point to where this court has considered the question presented in this case, it certainly has resolved similar situations in the context of federal courts. One such instance occurred in the Nguyen decision, where this Honorable Court held that:

> "under 28 U.S.C. § 292(a), which authorized the chief judge of a Federal Court of Appeals to designate "one or more district judges within the circuit" to sit on the Court of Appeals in certain circumstances, a three-judge panel of the United States Court of Appeals for the Ninth Circuit had not had the authority to decide two criminal defendants' appeals of their convictions on federal narcotics charges -- where by a purported designation, this panel had included the then Chief Judge of the District Court for

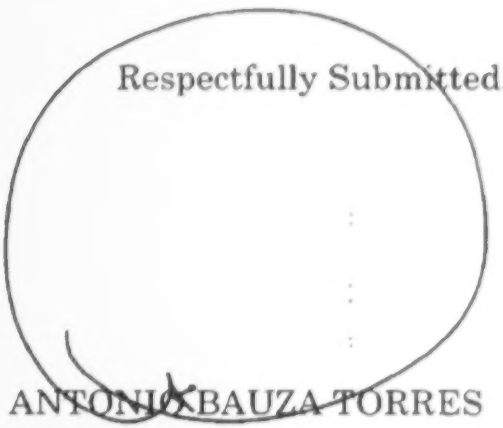
> the Northern Mariana Islands, which was a "territorial" court established by Congress under the Federal Constitution's Article IV, § 3, rather than under the Constitution's Article III." Nguyen v. United States, 539 U.S. 69, 70 (S. Ct. 2003), 123 S. Ct. 2130-2132.

If as in Nguyen, it was proper to vacate the judgment of the Ninth Circuit Court of Appeals panel based on a statutory violation, and where the petitioners had failed to raise the issue prior to their filing for certiorari, it must be equally proper to do so in this case where the violation is one of explicit constitutional mandates affecting a right to property of petitioner -- protected under the federal constitution -- and the issue was properly raised in the Puerto Rican courts. Id. Moreover, the Puerto Rican Constitution was enacted pursuant to the provisions of public law 600 which required not only the support of a popular vote, but ratification by the United States Congress as well. Public Law 600 of the 3rd of July of 1950, Chapter 446, 64 Stat. 314. Henceforth, the actions of the Puerto Rico Supreme Court not only violate the federal rights of petitioner and the sovereignty of the people of Puerto Rico, but also challenges the authority of Congress as exercised in its approval of public law 600 and the ratification of the Constitution of Puerto Rico on July 3, 1952.

CONCLUSION

It is based on the arguments above that petitioner Otto Curras respectfully submits that a writ of certiorari should be granted.

Respectfully Submitted,



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